



When recorded return to:

Methow Conservancy
P.O. Box 71
315 Riverside Avenue
Winthrop, WA 98862

10-183913-20

GRANT DEED OF CONSERVATION EASEMENT

Grantor: CHARLES LEHMAN AND YOUNGME LEHMAN

Grantee: THE METHOW CONSERVANCY

Legal Description

Abbreviated form: Pt of Section 4; Pt of Section 28; East 1/2 of Section 33; Pt of Section 34
Additional legal at Exhibit A.

Assessor's Tax Parcel Number: 3422282005, 3422344005, 3422331006, 3422334005,
3322041005, 3322043001

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made effective as of the date of recording by CHARLES LEHMAN AND YOUNGME LEHMAN, (husband and wife), having an address at 333 Twisp-Winthrop Eastside Road, Twisp, WA, 98856 (collectively, "Grantor"), in favor of THE METHOW CONSERVANCY, a Washington nonprofit corporation, having an address at 315 Riverside Avenue, Winthrop, WA 98862 ("Grantee"). The United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC) has certain rights hereunder, including third party right of enforcement. The Grantor, Grantee and the United States are collectively the "Parties".

I. RECITALS

A. **Protected Property.** Grantor is the sole owner in fee simple of that certain real property, inclusive of all standing and down timber (the "Protected Property") in Okanogan County, Washington, more particularly described in Exhibit A (Legal Description) and shown on Exhibit B (Site Map), which are attached to and made a part of this Easement by this reference. Grantor, as owner of the Protected Property, has the right to identify, protect, and preserve the Agricultural and other Conservation Values of the Protected Property, and desires to share such rights with the Grantee in perpetuity.

Lehman Uplands Farmland/ Critical Habitat CE

-1-

124428
EXCISE TAX PAID
\$ 38,867.00
JUL 24 2020 7/9/2020
TREASURER Pam
OKANOGAN COUNTY

B. Description of Protected Property. The Property consists of 1025 acres of shrub-steppe habitat on both sides of the Balky Hill Road just northeast of Twisp, Washington that has been historically grazed by livestock. The Property includes riparian draws with deciduous trees and shrubs, as well as a single conifer stand. Generally the landscape is dominated by shrub-steppe habitat (described below), including native grasses, sagebrush and bitterbrush. Much of the property is visible from the Balky Hill Road.

C. Agricultural and Critical Habitat and Scenic Values. The Protected Property possesses natural, scenic, open space, agricultural and wildlife values of great importance to Grantor, the people of Okanogan County and the people of the State of Washington (collectively, "Agricultural and Critical Habitat Values"), further described below:

1. Critical Habitat Values.

a. Riparian Habitat. The Protected Property contains riparian habitat which is located in the area identified as the Riparian Habitat Conservation Zone at Exhibit B. For purposes of this Easement, riparian habitat includes streams, wetlands, and ponds, and also includes the land area adjacent to such waters. Riparian habitat contains elements of both aquatic and terrestrial ecosystems which mutually influence each other and provide habitat for fish and wildlife species. Riparian Habitat provides vital functions to aquatic and upland ecosystems which include: soil and streambank stability, flood control, stream temperature control, water purification, water storage and conservation, and supply of food and nutrients to the aquatic system. Protection of large contiguous areas of riparian habitat prevents fragmentation and degradation of riparian and instream habitats for sensitive species such as grouse, bald eagle, songbirds and mule deer. The Riparian Habitat Conservation Zone may also include adjacent upland vegetation buffer areas which can be a potential source of siltation, pollution and undesirable vegetation.

b. Shrub-steppe Habitat. The Protected Property contains shrub-steppe habitat located in the area identified as the Upland Conservation Zone in Exhibit B. For the purposes of this Easement, shrub-steppe habitat describes a mixture of perennial forbs and grasses with a discontinuous over-story layer of native shrubs. Bitterbrush (*Purshia tridentata*) and sagebrush (*Artemisia tridentata*) are typically the dominant shrub species; Idaho fescue (*Festuca idahoensis*) and bluebunch wheatgrass (*Agropyron spicatum*) are typically the dominant grasses. Other associated shrubs include ceanothus, choke-cherry, serviceberry, rose and several species of currant. Associated forbs include arrowleaf balsamroot, silky lupine, desert buckwheat, Chelan penstemon, scarlet gilia, bitterroot and yarrow. Shrub-steppe plant associations provide vital wildlife habitat for focal conservation species such as white-tailed and mule deer, sharp-tailed grouse (last one seen in the Methow Valley in 1989), western meadowlarks, several bat species, the Western skink, spade-foot toads, short-horned lizards, and long-toed and tiger salamanders. This diverse species assemblage is sensitive to the impacts of development which include weed invasion, soil compaction, soil erosion and loss of habitat structure (important for shade, nutrient sequestration,

nesting, burrowing, water storage and cover from predators). Many shrub-steppe species can survive long periods of drought by going into dormancy, migrating to other areas, or hibernating deep underground. These unusual adaptive strategies mean that the components of the entire ecosystem may not be immediately visible, and the impacts of disturbance may have significant long-term and cumulative effects.

c. The Protected Property provides habitat for the Gray Wolf, a species classified as Endangered and protected under the Endangered Species Act. 16 U.S.C. § 1531 et. seq. Congress has found that encouraging public and private conservation programs "is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage of fish, wildlife, and plants." 16 U.S.C. § 1531(a)(5). One of the purposes of the Endangered Species Act is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." 16 U.S.C. § 1531(b). Restrictions on uses of the Protected Property would benefit the species listed above because Mule Deer, which are a key prey species for Gray Wolves, inhabit the Protected Property during both summer and winter. The Agricultural Land Easement Plan that is required by the terms of this Conservation Easement emphasizes non-lethal control measures for managing conflicts between gray wolves and livestock, permitting the recovery of the species within a working landscape

d. The Property provides habitat for Columbian sharp-tailed grouse (*Tympanuchus phasianellus columbianus*), a species classified as threatened under WAC 232-12-011, WAC 232-12-014, WAC 232-12-297, WAC 365-190-030(19) pursuant to authority granted by RCW 77.12.020(6), WAC 365-190-080(5)(c)(ii). The Protected Property includes the last known Sharptail lek in the Methow Valley. Restrictions on uses of the Protected Property would benefit the species because the Protected Property contains a mix and extent of grasslands and shrub-steppe habitat that provide the habitat types that Sharp-tail require, as well as shrubby riparian draws that provide winter food and habitat for grouse. Conservation of the Protected Property provides a significant opportunity for the potential for re-introduction of Sharp-tailed grouse in the Methow through the implementation of a Agricultural Land Easement plan, further described below, that protects important habitat features on the Protected Property.

f. The Protected Property is near large areas of public land, including the Pasayten Wilderness Area, Lake Chelan-Sawtooth Wilderness Area and the North Cascades National Park. The principal mandate for the National Wilderness Preservation System is "to secure for the American people of present and future generations the benefits of an enduring resource of wilderness." 16 U.S.C. § 1131(a). The preservation of the Protected Property in its existing open space condition would benefit the National Wilderness Area because some of the species this easement seeks to protect live a portion of their lifecycles on the valley floor, where private land predominates in the Methow Valley, and the preservation of this land in an undeveloped state helps avoid development based human impacts on those species. The Protected Property is within the migration corridor for the State of Washington's largest migratory herd of mule deer. These animals seasonally migrate between the summer fawning and grazing

areas at higher elevations on public land and winter habitat at lower elevations in the Methow River Valley. The preservation of the Protected Property in an undeveloped, or largely undeveloped state, facilitates the migration of these animals due to the minimization of human occupation and physical barriers.

g. Permanent protection of the Protected Property will further the purposes of the Washington State Habitat Conservation Account established under RCW 79A.15.060. Under the authority of the Habitat Conservation Account, the Recreation and Conservation Office, (hereinafter "RCO" or "the State") has provided \$1,134,050.00 to the Grantee for the acquisition and stewardship of this Conservation Easement, entitling the RCO to the rights identified herein. These funds are provided by the RCO pursuant to that certain grant agreement 16-1699A between RCO and the Methow Conservancy dated 3/14/2018 ("RCO Grant Agreement"). RCO is a third-party beneficiary of certain rights under this Easement.

2. Agricultural Values.

a. The legislatively declared policies of the State of Washington in the Washington State Open Space Tax Act, Chapter 84.34 RCW, provide "that it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crop, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well being of the state and its citizens." Under the Open Space Act, lands eligible for preferential real property tax treatment include lands designated by the County such as the subject Protected Property where the preservation in its present use would conserve and enhance natural resources and promote conservation of agricultural lands. Pursuant to this legislative directive, Okanogan County has adopted an Current Use/Open Space Tax Program that recognizes the importance of, and provides preferential tax treatment for, the maintenance, preservation, conservation, and to otherwise continue in existence open space lands for the production of food, fiber, and forest crops, and to assure the use and enjoyment of natural resources and scenic beauty for the economic well-being of the State of Washington and its residents. The Protected Property is currently classified as Open Space under the Washington State Open Space Tax Act.

b. The Protected Property contains valuable agricultural lands, as shown on Exhibit B (Site Map) which contain "grasslands of special environmental significance". The Federal Agricultural Conservation Easement Program ("ACEP") purpose is to purchase conservation easements for the purpose of protecting agricultural use and related conservation values of eligible land by limiting nonagricultural uses of that land. (16 USC § 3865 et seq). Under the authority of the ACEP, the NRCS has provided \$1,270,000.00 to the Grantee for the acquisition of this Conservation Easement, entitling the United States to the rights identified herein.

3 Scenic Values. Portions of the Protected Property are visible from the Balky Hill Road, providing Scenic Values to the people of Washington and out of state visitors who use this public area. Preservation of the Protected Property in its current open space condition would benefit these Scenic Values because the maintenance of the property in its current undeveloped condition provides pastoral views from Balky Hill Road.

D. Significant Public Benefit. The Protected Property would be extremely desirable property for substantial residential development because of its location and orientation. The Protected Property is zoned for as many as 51 lots, which would allow up to 51 homes on the Protected Property. In the absence of a Grant Deed of Conservation Easement, the Protected Property could be developed in a manner which would destroy or significantly degrade the Agricultural and other Conservation Values of the Protected Property. Preservation of the Protected Property will provide the public with the benefit of its agricultural, wildlife, open space, scenic and natural qualities.

E. Baseline Documentation. The Agricultural and other Conservation Values are further documented in an inventory of relevant features of the Protected Property, dated May 2020, on file at the offices of Grantee and incorporated into this Easement by this reference ("Baseline Documentation"). The Baseline Documentation consists of reports, maps, photographs, and other documentation that the Parties agree provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant, and to show a change in the use or condition of the Protected Property.

F. Qualified Organization. Grantee Methow Conservancy is a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, (the "Code") and also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and 84.34.250, whose primary purpose is to acquire, hold, preserve and dispose of land, easements, leases, or other rights of interest in land, or improvement to land, with an emphasis on lands in the Methow Valley, for the purpose of protecting riparian areas, wetlands, forests, streams, lakes, ponds, scenic areas, ecological, historical or other natural features and agricultural areas.

G. Federal Funds. This Grant Deed of Conservation Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP) 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468 for the purpose of protecting grazing uses and related conservation values by restoring and conserving the Protected Property.

Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of the Grantee.

H. Purchase Price. Grantee is paying Grantor \$2,540,000 (Two Million Five Hundred Forty Thousand Dollars) for the Easement ("Purchase Price").

I. **Declaration of Parties' Intent.** Grantor and Grantee jointly and mutually agree, by entering into this Easement, to honor their intentions as stated in this Easement and to mutually and jointly preserve and protect in perpetuity the Agricultural and other Conservation Values for the benefit of this generation, and the generations to come.

II. CONVEYANCE AND CONSIDERATION

A. **Consideration.** For the reasons stated above, and in consideration of the Purchase Price, the mutual covenants, terms, conditions, and restrictions contained in this Easement, Grantor hereby voluntarily grants, conveys and warrants to Grantee a conservation easement in perpetuity over the Protected Property, consisting of certain rights in the Protected Property, as defined in this Easement, subject only to the reservations contained in this Easement and title matters set forth as exceptions to title in Exhibit A.

B. **Conveyance.** This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130.

C. **Perpetual Duration.** Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.

D. **Water Rights.** Grantor is not conveying to Grantee any water rights held by Grantor; however, Grantor hereby agrees not to transfer, sell, lease or otherwise separate the water rights dedicated to agricultural use (Dedicated Water Rights) from the Protected Property without the prior written consent of the Grantee upon a determination that such transfer, sale or lease is consistent with maintenance of the Agricultural and other Conservation Values on the Protected Property. The Dedicated Water Rights are described in Exhibit "D" which is attached to this instrument and incorporated herein by this reference. Grantor shall not abandon or relinquish any of the water rights. If the water rights are under threat of abandonment or relinquishment, Grantor will cooperate with Grantee to help assure the continued use of the water rights for beneficial purposes. Any relinquishment, loss or forfeiture of the Dedicated Water Rights shall not be deemed or construed to be a waiver of Grantee's rights under this Easement or to defeat the Purpose of this Easement, and shall not otherwise impair the validity of this Easement or limit its enforceability in any way.

III. PURPOSE

The purpose of this Easement (the "Purpose") is to implement the mutual intentions of Grantor and Grantee to preserve and protect in perpetuity the Agricultural and Critical Habitat Values of the Protected Property described in the above Recitals, which are incorporated herein by

this reference, and to prevent any use of, or activity on, the Protected Property that will impair or interfere with the Agricultural and other Conservation Values, to assure that:

A. The opportunity for agricultural activity upon the Protected Property, pursuant to RCW 79A.15.130(1), be retained forever, and

1. the grasslands of special environmental significance will be protected in order to preserve the agricultural viability and the integrity of grassland habitat on the Protected Property;

2. the Protected Property will be preserved in order to maintain the agricultural viability of the Protected Property by protecting grasslands, and grazing uses and related conservation values.

3. the Protected Property will be preserved for "continued production of food, fiber and forest crop, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well being of the state and its citizens" (as that phrase is used in RCW 84.34 and Okanogan County Code 14.08);

B. the Protected Property will be preserved for the scenic enjoyment of the general public (as that phrase is used in Section 170(h)(4)(A)(iii)(I) of the Internal Revenue Code) and will yield a significant public benefit;

C. The Protected Property will be retained forever predominantly in its existing condition as "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," (as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii), as amended and in regulations promulgated under this law);

D. To further the Purpose of this Easement, the Parties have developed an Agricultural Land Easement Plan for management and stewardship of the Protected Property (the "ALE Plan"), as further described in Section IV.B., dated February, 2019, and incorporated herein by reference. The ALE Plan was prepared in consultation with and approved by NRCS, developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 in effect on the Effective Date of this Easement. This plan was developed using Resource Planning Criteria for RMS (Resource Management System) found in the Field Office Technical Guide, Section III, to preserve and improve the integrity of the natural habitat of the Protected Property while recognizing the continued agricultural use of the Protected Property. Grantor intends that the ALE Plan (including specifically the Grassland Management and Fish and Wildlife component plans) will confine the use of, or activity on, the Protected Property to agricultural uses consistent with the protection of the Conservation Values of the Easement.

IV. RIGHTS CONVEYED TO GRANTEE

To accomplish the Purpose, the following rights are conveyed to Grantee by this Easement:

A. **Identification, Protection, Restoration.** To identify, preserve, protect and restore in perpetuity the Agricultural and Critical Habitat Values of the Protected Property enumerated in Section I.C.

B. **Agricultural Land Easement Plan.** As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Protected Property are subject to an ALE Plan, as approved by NRCS, to promote the long-term viability of the land to meet the ALE purposes. The ALE Plan must also be approved by the Grantor and the Grantee. Grantor agrees the use of the property will be subject to the ALE Plan on the Protected Property.

The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the Purpose of this conservation easement. The Grantee and Grantor agree to update the ALE Plan any time the type of agricultural use of the Protected Property changes (for example if sheep or horses are grazed on the Property instead of cattle), or when the ownership of the Protected Property changes. A copy of the current ALE Plan is kept on file with the Grantee.

The Grantee must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, NRCS may notify the Grantee. NRCS will give the Grantee and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action. If Grantee fails to enforce the terms of the ALE plan, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement. *(This provision also appears in Appendix E, Section I.1.)*

C. **Access.**

1. To enter the Protected Property annually, at a reasonable time and upon prior written notice to Grantor, for the purpose of making a general inspection of the Protected Property to monitor compliance with this Easement.

2. To enter Protected Property at reasonable times and upon prior written notice to Grantor, for the purpose of maintaining or restoring the Agricultural and Habitat Conservation Values on the Protected Property through implementation and enforcement of the ALE Plan and any Stewardship Plan jointly executed by Grantor and Grantee.

3. To enter the Protected Property at such other times as are necessary if Grantee has a reason to believe that a violation of the Easement is occurring or has occurred, for

the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement. Such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property.

D. Injunction and Restoration. To enjoin any use of, or activity on, the Protected Property that is inconsistent with the Purpose, including trespasses by members of the public, and to require or undertake the restoration of such areas or features of the Protected Property as may be damaged by uses or activities inconsistent with the provisions of this Easement, all in accordance with Section X.

E. Enforcement. To enforce the terms of this Easement, consistent with Section X.

F. Assignment. To assign, convey, or otherwise transfer Grantee's interest in the Protected Property in accordance with Section XV.

G. Development Rights. All unused development rights (except such as are specifically reserved herein) that are now or hereafter allocated to, implied, reserved or inherent in the Protected Property, and the Parties agree that such rights are terminated and extinguished, and may not be used on any portion of the Protected Property as it now or hereafter may be bounded or described, or used on or transferred to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield or density of the Protected Property or any other property.

V. USES AND ACTIVITIES CONSISTENT WITH THE PURPOSE OF THE EASEMENT

General. Grantor reserves for itself and its personal representatives, heirs, successors and assigns, all rights accruing from ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Protected Property that is not inconsistent with the Purpose and that is not prohibited by this Easement. Without limiting the generality of this subsection, Grantor specifically reserves for itself and its personal representatives, heirs, successors, and assigns, the following uses and activities:

A. Agricultural Use. Grantor may pursue agricultural activities on the Protected Property; provided that such activities are carried out in compliance with the terms of the ALE Plan, with federal, state, and local regulations and in a manner that does not impact the Agricultural and other Conservation Values of the Protected Property. (*Permitted agricultural activities are further outlined in Appendix E, Section I.4.*)

1. As used herein, "Agricultural Activities" shall mean the production of livestock consistent with the ALE Plan. Plowing, sod-busting, and cultivation of crops are prohibited, except for restoration purposes with the prior written approval of the Grantee.

2. Agricultural Activities shall also include such "Accessory Uses," as defined in RCW 36.70A.177(3)(b), that are related to the permitted Agricultural Activities on the Protected Property, that maintain the primacy of, and are subordinate to, the farmland character and use of the Protected Property, that are compatible with the Agricultural and other Conservation Values, and that provide supplemental income. Accessory uses are permitted on the Protected Property and in the buildings constructed and maintained for the agricultural use of the Protected Property. Accessory Uses may include: (i) Agricultural accessory uses and activities, including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers, agriculturally related experiences, or the production, marketing, and distribution of value-added agricultural products, including support services that facilitate these activities; and (ii) Nonagricultural accessory uses and activities as long as they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site. Non-agricultural accessory uses that require their own buildings are prohibited

3. Low impact agri-tourism activities consistent with the requirements of V.B.2 are permitted, such as farm tours, work experiences, field trips and hay rides.

4. Grantor may use the Upland Conservation Zone for grazing, provided that the intensity, timing and duration of grazing by livestock shall be in accordance with the Grasslands Management Plan component of the ALE Plan. Pasturing and grazing must be conducted in a manner, intensity and scale that does not adversely impact the grassland functions and values, along with other Conservation Values on the Protected Property. In particular, grazing may not occur beyond the utilization rate defined in the ALE Plan; and grazing animals must be excluded from the Riparian Zones shown on Exhibit A, except as provided below for stewardship reasons. The functions and values of grasslands are the ecosystem services provided, including but not limited to domestic animal productivity, biological productivity, plant and animal richness and diversity, wildlife habitat (including habitat for pollinators and native insects), and water quality and quantity benefits. The Grasslands Management Plan shall be updated if the Grantee deems that the basic type of agricultural operation on the Property has changed (eg, grazing sheep or horses instead of cattle) or when the ownership of the Property changes. (see Section IV.B). The Parties will work together to obtain an updated conservation plan from NRCS or an NRCS-certified planner in the event of such changes.

Grantor and Grantee agree to meet annually prior to the beginning of the grazing season to review the monitoring results from the previous grazing season, to discuss adjustments to stocking rates, duration of use, pasture rotation, etc. in order to comply with the Grasslands Management Plan. Grantor may not graze the property until this meeting has taken place each year.

5. The Riparian Habitat Conservation Zones shall be fenced to control access by livestock. Generally livestock will be excluded except for stewardship oriented reasons, upon prior approval by the Grantee.

6. Grantor may maintain, renovate, expand or replace the existing agricultural structures in substantially their present locations, as shown on Exhibit B. Grantor may also construct new agricultural structures, including new water developments, to keep the Protected Property viable for agricultural operation. Grantor may also construct shade structures to provide shelter for livestock subject to any restrictions on such activity contained in the ALE Plan. All permanent agricultural structures are subject to the Impervious Surface Limitations as set forth in this Conservation Easement Deed.

7. Grantor may place seasonal, temporary living structures (eg tent or yurt) for range riders or herders on the property, provided that they are removed at the end of the grazing season. Tent platforms less than 2 feet above mean grade do not have to be removed.

C. Forest Management. Grantor may pursue forest management activities on the Protected Property for the purposes of forest health, fuels reduction, or habitat enhancement, provided that forest management must be conducted in a manner that preserves the biological diversity of the Property. For the purposes of this Easement, biological diversity means a mix in both age and species of forest species (including, but not limited to conifer stands, aspen groves, and other deciduous stands), and includes the retention of a range of sizes and types of woody debris and snags, and retention of the largest and healthiest trees and early successional habitats.

D. Recreation. The undertaking of recreational activities such as hiking, bird watching, cross country skiing, fishing and hunting on the Protected Property; provided that such activities are conducted in a manner and intensity that does not adversely impact the Agricultural and other Conservation Values of the Protected Property, subject to the following limitations:

1. Commercial hunting on the Protected Property is specifically prohibited. Commercial hunting means any hunting for which a fee or other consideration is charged by the Grantor.

2. Grouse hunting of any species of grouse is prohibited on the property until Columbian sharp-tailed grouse (*Tympanuchus phasianellus columbianus*) are removed from an endangered, threatened or sensitive species classification under WAC 232-12-011, WAC 232-12-014, WAC 232-12-297, WAC 365-190-030(19) pursuant to authority granted by RCW 77.12.020(6), WAC 365-190-080(5)(c)(ii).

3. Trails may be cleared for recreational purposes, provided that the Conservation Values are not adversely impacted, and the clearing of brush for trails does not exceed 6 feet in width. Trails will not be used by motorized vehicles of any kind and may not be surfaced with an impervious material.

E. Roads. The maintenance of existing farm roads or the construction of a new farm road on the approved alignment shown Exhibit B. existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property. *(This provision also appears in Exhibit E, Section I.3.C.)*

. Farm roads may not be paved.

F. Herbicides and Pesticides. Herbicides and pesticides may be used on the Protected Property only in the amounts and with the frequency constituting the minimum necessary to accomplish reasonable agricultural, forestry and residential objectives. Herbicides and pesticides which require a license to purchase must be applied in accordance with label restrictions. Pesticides and herbicides may not be used in the Riparian Habitat Conservation Zone unless Grantor obtains prior written approval of Grantee.

G. Utilities. The underground installation of new utility systems or the underground extensions of existing underground utility systems, including, without limitation, water, power, fuel, and communication lines and related facilities, to serve the agricultural uses on the Protected Property; except that any such installation in the Riparian Habitat Conservation Zone unrelated to stockwatering, or which reduces the usable agricultural acreage on the Protected Property is prohibited.

H. Solar Facilities. The placement or construction of facilities for the development and utilization of solar energy resources without the prior written approval of Grantee, except that small solar facilities to pump water from water developments to troughs shall be exempt from this requirement.. Solar facilities are subject to the impervious surface limitation.

I. Fences. The construction and maintenance of fences on the Protected Property, including the clearing of brush along the fence alignment for the purposes of reasonable and customary management of livestock and wildlife; except that no new deer impassable fencing is permitted unless Grantor obtains prior written approval of Grantee. *(Additional limitations on fencing are found in Exhibit E, Section I.3.C.)*

J. Maintenance of Existing Ditching or Diking. The maintenance of existing ditching or diking to protect existing or permitted roads and trails, agricultural structures and ditches, residential structures, and permitted uses and activities associated with agricultural and residential structures.

K. Composting and Storage of Wastes. The composting and use of organic and vegetative waste resulting from uses and activities on the Protected Property, consistent with the Purpose, and the storage of other wastes generated by uses and activities on the Protected Property

consistent with the Purpose; provided that such other wastes are stored temporarily in appropriate containment for removal at reasonable intervals and in compliance with applicable federal, state, and local laws, and further provided that such composting, use, and storage is not located within the Riparian Habitat Conservation Zone.

L. Protection of Public Health or Safety. The undertaking of other activities necessary to protect public health or safety on the Protected Property, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity; provided prior written approval is obtained by Grantor and that any such activity is conducted so that interference with the Conservation Values of the Property is avoided, or, if avoidance is not possible, minimized to the greatest extent possible. Grantor may proceed without Grantee's approval only if Grantor notifies Grantee prior to taking such action and Grantee cannot provide its approval within such time as is reasonable under the circumstances.

M. Creation of Mortgage Liens. The creation of consensual liens, whether by mortgage, deed of trust, or otherwise, for the purpose of securing repayment of indebtedness of the Grantor is allowed, so long as such liens shall remain subordinate to this Easement.

N. Stewardship Activities. The undertaking of any activity performed pursuant to the Stewardship Plan covering the Protected Property and approved by the Grantee is consistent with the Purpose of this Easement so long as such activity is not specifically prohibited by the terms of this Easement.

VI. USES AND ACTIVITIES INCONSISTENT WITH THE PURPOSE OF THE EASEMENT

General. Any use of, or activity on, the Protected Property inconsistent with the Purpose is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of this subsection, the following uses of, or activities on, the Protected Property, though not an exhaustive list, are inconsistent with the Purpose and shall be prohibited; except to the extent expressly reserved in Section V or in this section:

A. Subdivision. Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited. (*This provision also appears in Exhibit E, Section I.3.A.*)

Notwithstanding the foregoing, this term will not be interpreted to prohibit leases for agricultural purposes.

B. Conversion to Non-Agricultural Use. Conversion of the Upland Conservation Zone as shown on Exhibit B to non-agricultural use shall be prohibited. The land may lay fallow

and ungrazed, so long as the grassland character of the property is maintained. Except for grazing uses and grassland restoration and conservation, the cultivation or production of crops, nonperennial forages for human or domestic animal consumption, crop seed production, or planting of orchards, vineyards, berries, tree farms, or other perennial nongrassland agricultural product is prohibited. *(The prohibition of cultivation also appears in Exhibit E, Section I.3.G.)*

C. Construction. The placement or construction of any permanent, temporary or mobile buildings, structures, or other improvements of any kind (including, without limitation, pipelines, wells, septic systems, drain fields, fences, roads, trails and parking areas); except as provided in Section V herein. *(See Exhibit E for additional limitations/exceptions)*

Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under **Section I, Paragraph (4)(C)** that neither individually nor collectively have an adverse impact on the grassland, grazing uses and related conservation values of the Protected Property, may be built outside of the Building Envelope with prior written approval of the Grantee provided that the agricultural structures or utilities are consistent with the ALE Plan described Section I, Paragraph 1. *(This restriction as to location also appears in Exhibit E, Section I.3.C.)*

D. Impervious Surfaces Limitation. Impervious surfaces will not exceed 2% of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this ALE. *(This provision also appears in Appendix E, Section I.2.)*

E. Removal of Trees and Other Vegetation. The pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located on the Protected Property, except as expressly provided in Section V; or with the prior written approval of Grantee to preserve, protect or enhance the Agricultural and other Conservation Values.

F. Residential Uses. Use of the Protected Property for any residential purpose, except as provided in Section V.A.7.

G. Industrial or Commercial Uses. Industrial or commercial activities on the Protected Property are prohibited except for the following:

1. Agricultural production and related uses conducted as described in the ALE Plan;

2. The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the conservation purposes of this Easement;

3. Temporary or seasonal outdoor activities or events that do not harm the agricultural use or grazing and grassland use, future viability, and related conservation values of the Protected Property herein protected;

4. Commercial enterprises related to agriculture or forestry including but not limited to agritourism;

5. Small-scale commercial enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts.

(This provision also appears in Exhibit E, Section I.3.B.)

H. Commercial Recreational Activity. More than a *de minimis* use of the Protected Property for commercial recreational activities, as such terms are defined by Section 2031(c)(8)(B) of the Code and the applicable Treasury Regulations. Furthermore, any recreational use of the Protected Property, commercial or otherwise, is permitted only to the extent such recreational use is non-developed and passive, does not negatively affect the soils and the agricultural operations and is consistent with the Purpose of this Conservation Easement.

I. Utilities. The above ground installation of new utility systems or the above ground extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities, except with Grantee's prior written approval to protect or enhance the Conservation Values.

J. Alteration of Land. Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

1. Dam construction in accordance with an ALE Plan to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation;

2. Erosion and sediment control pursuant to a plan approved by the Grantee;

3. Soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Easement

4. Grazing uses or grassland restoration and related conservation activities conducted in accordance with the ALE Plan.

(This provision also appears in Exhibit E, Section I.3.E.)

K. Alteration of Water Courses. The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds, the diking or riprap of water courses, or the creation of new wetlands, water impoundments, or water courses; except with the prior written approval of Grantee to preserve or protect the Agricultural and other Conservation Values. This provision shall not be interpreted to prohibit irrigation or diverting, collecting, storing, or transporting water pursuant to existing water rights for agricultural purposes as described in Section V.

L. Erosion or Water Pollution. Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.

M. Feedlots. The establishment and maintenance of a commercial feedlot on the Protected Property. For the purposes of this Easement, a commercial feedlot is a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has not been raised on land owned or used by the Grantor as a part of the agricultural operation on the Protected Property.

N. Aquatic Products. Grantor shall not engage in, or permit others to engage in, the commercial production of cultivated marine or freshwater aquatic products on the Property.

O. Waste Disposal. The disposal, storage or release of rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or Hazardous Materials on the Protected Property. The term "Hazardous Materials" shall not include biosolids, herbicides, pesticides, rodenticides, insecticides, and fertilizers applied in accordance with federal, state, and local law.

P. Signs. The placement of commercial signs, billboards, or other advertising material on the Protected Property; except that signs may be placed on the Protected Property to identify the Protected Property, to advertise for sale or rent, to state the conditions of access to the Protected Property or to acknowledge the placement of this Easement on the Protected Property, provided that such signs are less than nine (9) square feet in area per side and are located to preserve, as much as possible, the scenic Conservation Values of the Protected Property.

Q. Mining. Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this ALE or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from Protected Property is prohibited. *(This provision also appears in Exhibit E, Section I.3.F.)*

R. **Wildlife Disruption.** The intentional disruption of wildlife breeding, foraging and nesting activities. This prohibition will not be construed to prohibit agricultural activities consistent with the ALE plan or hunting on the Protected Property consistent with state and federal law and Section V.D of this easement.

S. **Introduced Vegetation.** The intentional introduction of nonnative invasive species on the Protected Property, or the planting or introduction of any non-native species of vegetation in the Riparian Habitat Conservation Zone; except with the prior written approval of Grantee to enhance the Agricultural and other Conservation Values.

T. **Harvesting of Native Plants.** The commercial gathering, picking, taking, or harvesting of native plants, or any parts thereof, from the Protected Property.

U. **Off-Road Vehicles.** The operation of motorcycles, ATV's, dune buggies, snowmobiles, or any other type of motorized recreational vehicles, or the operation of other sources of compaction or erosion that could adversely impact the Agricultural and other Conservation Values of the Protected Property; except that such motorized vehicles may be used for farming or maintenance purposes, or on an occasional basis by the members of the Lehman Family for so long as they own the Protected Property; provided that such occasional use shall not occur: (1) during the period from one hour after sunset to one hour before sunrise or (2) within the Riparian Habitat Conservation Zone at any time; and further provided that the Agricultural and other Conservation Values of the Protected Property are not adversely impacted by such use. As used in this easement, the "Lehman Family" shall include Charles and Youngme Lehman, Grantors of this easement, and their direct descendants and spouses.

V. **Easements.** The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the grassland, grazing uses, and related conservation values of the Protected Property as determined by the Grantee in consultation with the Chief of NRCS. *(This provision also appears in Exhibit E, Section I.3.D.)*

VII. STEWARDSHIP

A. **Stewardship Plan.** When necessary to further the Purpose, Grantor and Grantee commit to work together to develop an additional written plan (in addition to the ALE Plan) for stewardship of the Protected Property (the "Stewardship Plan"). The Stewardship Plan is intended to describe activities to monitor, protect, maintain, and restore the original and natural conditions of the Riparian Habitat Conservation Zone and to conserve and protect valuable grasslands in the Upland Conservation Zone. The Stewardship Plan will be updated periodically by written mutual agreement of the Grantor and Grantee.

B. Invasive Non-Native Species. Grantor and Grantee commit to work together over the coming years to explore and implement reasonable methods of controlling or eradicating invasive non-native species on the Protected Property. Nonnative invasive species shall be defined as those species shown as Class A, B or C weeds on the Okanogan County Noxious Weed Control Board's Weed List.

VIII. NOTICE AND APPROVAL

A. Notice.

1. Several provisions of this Easement require Grantor to notify Grantee and to receive Grantee's written approval prior to undertaking certain permitted uses and activities within the Protected Property (including without limitation Sections II.D, V.E, V.F, V.H, V.I, VI.E, VI.I and VI.S). The purpose of requiring Grantor to notify Grantee prior to undertaking these permitted uses and activities is to afford Grantee an adequate opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Purpose. Whenever such notice is required, Grantor will notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the use or activity in question. The notice will describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the terms and Purpose.

2. Grantee. Several provisions of this Easement require Grantee to give notice to Grantor prior to undertaking certain activities within the Protected Property (including without limitation Sections IV.B.1, IV.B.2, IV.B.3 and XV.A). Whenever such notice is required, Grantee will notify Grantor in writing not less than thirty (30) days prior to the date Grantee intends to undertake the use or activity in question, unless otherwise provided for by this Easement.

B. Approval. Where approval by one of the Parties is required under this Easement, such approval must be granted or denied in writing within thirty (30) days of receipt of a written request for approval, and such approval will not be unreasonably withheld. Grantee may impose conditions for approval.

1. Grantee. Grantee's approval for any discretionary consent permitted by this Easement may be withheld only upon a reasonable determination by Grantee that the use or activity as proposed would be inconsistent with the Purpose. Grantee's approval may include reasonable conditions that must be satisfied in undertaking the proposed use or activity.

2. Failure to Approve Within the Required Time. When approval is required under this Easement, and when such approval is not granted or denied within the time period and

manner set forth in this subsection, approval of the permitted use or activity in question may be presumed.

C. Optional Consultation. If Grantor is unsure whether a proposed use or activity is prohibited by this Easement, Grantor may consult Grantee by providing Grantee a written notice describing the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose and to provide comments thereon to Grantor. This subsection does not itself impose a requirement of prior approval of the activity described in any such notice; however, if Grantee does not provide written objections within thirty (30) days after receipt of Grantor's notice, Grantee will be deemed to have approved of the proposed use or activity.

D. Addresses. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other must be in writing and either served personally or sent by first class certified mail, postage prepaid, or by facsimile (if available) with original dispatched by certified mail, addressed as follows, or to such other address as either party from time to time will designate by written notice to the other:

To Grantor: Charles and Youngme Lehman
333 Twisp-Winthrop Eastside Road
Twisp, WA 98856

To Grantee: Methow Conservancy
315 Riverside Avenue
P.O. Box 71
Winthrop, WA 98862

To RCO: Recreation and Conservation Office
PO Box 40917
1111 Washington Street SE,
Olympia, WA 98504;

To NRCS: State Conservationist
U.S. Natural Resources Conservation Service
Washington State Office
11707 E Sprague Ave., Suite 301
Spokane Valley, WA 99206
(509) 323-2900
(509) 323-2909 FAX

or to such other address as either party designates by written notice to the other.

IX. DISPUTE RESOLUTION

Any claim, controversy or dispute arising out of or in connection with the Easement Agreement (hereinafter referred to as "the dispute") will be resolved as follows:

A. Notice/Informal Meeting. A party seeking dispute resolution under this Section will give the other party written notice implementing the dispute resolution process, which notice will describe in reasonable detail the dispute. The Grantor and Grantee will first meet and confer in good faith to fairly and equitably resolve the dispute. Such meeting will occur within fourteen (14) days after the date of notice implementing dispute resolution. The party receiving notice will suspend the activities that are the subject of the dispute upon such notice; failure to do so will entitle the other party to proceed with remedies under Section X of this Easement.

B. Mediation of Dispute. If the Grantor and Grantee cannot resolve the dispute within twenty-one (21) days after the date of notice implementing this dispute resolution process, then they will mediate the dispute under the auspices of the American Arbitration Association, the Washington Arbitration and Mediation Service, JAMS-End Dispute, Judicial Dispute Resolution, or any other commercial organization or individual agreed to by the Grantor and Grantee in this Agreement. If they cannot agree on the choice of mediator within seven (7) days after their failure to resolve the dispute informally under Section IX.A, they will mediate the matter under the auspices of the American Arbitration Association. Any mediation must take place in Winthrop, Washington, and will be held within 60 days after the date of notice implementing this dispute resolution process. The Grantor and Grantee will each pay their own costs, and will each pay one half (1/2) the cost of the mediator.

C. Arbitration. If the Grantor and Grantee cannot resolve the dispute in mediation, then and only then may the Grantor and Grantee, by mutual assent, submit the dispute to arbitration under the auspices of the American Arbitration Association, the Washington Arbitration and Mediation Service, JAMS-End Dispute, Judicial Dispute Resolution, or any other commercial organization or individual agreed to by the Grantor and Grantee in this Easement. If the Grantor and Grantee cannot agree on the choice of arbitrator within seven (7) days of their failure to resolve the dispute under Section IX.B, then the arbitration will be conducted under the auspices of the American Arbitration Association. Any arbitration must take place in Winthrop, Washington, and will be held within 90 days of the date of notice implementing this dispute resolution process. The Grantor and Grantee each will pay one half (1/2) the cost of the arbitrator. If either or both parties do not assent to such arbitration then judicial resolution may be sought by either party pursuant to Section X.

D. Decision of Arbitrator. A single neutral arbitrator will conduct the arbitration hearing and decide the issues submitted to arbitration. Except as otherwise provided in the Easement Agreement, the arbitration proceedings will bind the Grantor and Grantee as a final decision, be conclusive and not appealable and any party to any award rendered in arbitrator's

decision will be entitled to have judgment entered in and enforced by a court of competent jurisdiction, with all remedies, whether legal or equitable, available in court also available in arbitration. If either the Grantor or Grantee refuses to satisfy an arbitration award, then the other party will have the right to receive reimbursement for all of its costs incurred to confirm that award, including a reasonable attorneys' fee.

E. Costs and Expenses. The arbitrator may make an award of reimbursement to the substantially prevailing party for out-of-pocket expenses or losses together with any other damages to which the substantial prevailing party is entitled, including, without limitation, reasonable attorneys' fees, and costs and expenses of arbitration that the evidence supports. However, the arbitrator will lack any authority to grant exemplary or punitive damages, or to fashion any relief that would make the Purpose of this Conservation Easement impracticable to achieve and subject to extinguishment under Section XIII. Finally, the arbitrator may assess interest on any award at the legal rate of interest due on judgments in Washington State.

X. JUDICIAL RESOLUTION

A. Notice of Violation, Corrective Action. If Grantee determines that the Grantor or its personal representatives, heirs, successors, or assigns is in violation of the terms of this Easement or that a violation is threatened, and if such determination or dispute is not resolved by mediation and if the Grantor and Grantee fail to agree to binding arbitration, all as set forth in Section IX hereof, Grantee will give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.

B. Grantor's Failure to Respond. Grantee may bring an action as provided in subsection C if Grantor:

1. Fails to cure the violation within seven (7) days after receipt of a notice of violation from Grantee given pursuant to subsection A; or
2. Under circumstances where the violation cannot reasonably be cured within such seven (7) day period, fails to begin curing the violation within the seven (7) day period and fails to continue diligently to cure such violation until finally cured.

C. Grantee's Action.

1. **Injunctive Relief.** Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:

a. To enjoin the violation, ex parte as necessary, by temporary or permanent injunction; and

b. To require the restoration of the Protected Property to the condition that existed prior to any such injury.

2. **Damages.** Grantee will be entitled to recover damages for violation of the terms of this Easement or injury to any Agricultural and other Conservation Values protected by this Easement. Inasmuch as the actual damages to the Agricultural and other Conservation Values which could result from a breach of this Easement by Grantor would be impractical or extremely difficult to measure, the Grantor and Grantee agree that the money damages Grantee is entitled to recover will be, at Grantee's election, the higher of :

a. With respect to the construction of any improvement prohibited by this Easement, which is not subsequently removed and the Protected Property restored to its previous condition within a reasonable amount of time specified by Grantee, then damages will be an amount equal to the greater of (i) the actual cost of such improvement, or (ii) the increase in the fair market value of the Protected Property or of any other real property owned by Grantor attributable to such improvement; and

b. With respect to any use or activity prohibited by this Easement, whether or not involving the construction or maintenance of an improvement, an amount equal to the greater of (i) the cost of restoring any Agricultural and other Conservation Values that have been damaged by such violation or (ii) the amount of any economic gain realized by the Grantor and/or any other party, commencing from the date of breach; provided, however, that if timber, logs or any other forest products are harvested or are removed in violation of the terms of this Easement, the amount determined under this Section shall be equal to three times the greater of (a) the actual sales price realized upon disposition of such harvested timber, logs or other forest products, or (b) the current market price of such harvested timber, logs or other forest products as of the date of breach.

D. Grantor's Action. In the event that Grantor seeks determination as to the legal meaning or effect of this Easement, or as to any alleged violation hereof by Grantee, and if such determination or dispute is not be resolved by mediation and if the Grantor and Grantee fail to agree to binding arbitration, all as set forth in Section IX hereof, then Grantor will be entitled to bring judicial action including action at law and/or in equity therefore.

E. Emergency Enforcement. Notwithstanding the provisions of Section IX, if Grantee determines that circumstances require immediate action to prevent or mitigate significant damage to the Agricultural and other Conservation Values, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.

F. Scope of Relief. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee will be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section will be cumulative and in addition to all remedies now or hereafter existing at law or in equity. The provisions of Section X.C.2 shall not be interpreted to preclude Grantee from obtaining injunctive relief.

G. Costs of Enforcement. In any suit, action, or proceeding to enforce or interpret this Easement,, the substantially prevailing party in any such suit, action or proceeding will be entitled to recover from the non-prevailing party all costs and expenses incurred therein, including reasonable attorneys' fees and costs of litigation, including the fees of experts and consultants and all such costs and expenses will be included in any judgment secured by such prevailing party. In the event that Grantor or Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of any restoration and the substantially prevailing party's reasonable expenses will be borne by the other party and those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use of activity.

H. Discretion in Enforcement. Enforcement of the terms of this Easement is at the discretion of Grantee, and any failure to discover a violation or forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees will not be deemed or construed to be a waiver by Grantee of such term of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor will impair such right or remedy or constitute a waiver or estoppel of its rights to enforce this Easement.

I. Acts Beyond Grantor's Control. Neither Grantor nor Grantee will be in default or violation as to any obligation created hereby and no condition precedent or subsequent will be deemed to fail to occur if such party is prevented from fulfilling such obligation by, or such condition fails to occur due to:

1. Actions by trespassers upon the Protected Property. In the event the terms of this Easement are violated by acts of trespassers, Grantor agrees, at Grantee's request, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties;

2. Forces beyond such Grantor's reasonable control, including without limitation, destruction or impairment of facilities resulting from breakdown not resulting from lack of ordinary care and maintenance, flood, earthquake, slide, storm, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, terrorism, proceeding by court or public authority, or act or failure to act by court, public authority or third party, which forces by exercise of due diligence and foresight such party could not reasonably have expected to avoid; or

3. Any action deemed reasonable by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

J. **Compliance Certificates.** Upon request by Grantor, Grantee will within thirty (30) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including a compliance certificate, that certifies, to the best of Grantee's knowledge, the status of Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement. Such certification will be limited to the condition of the Protected Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee will conduct an inspection, at Grantor's expense, and provide the compliance certificate to Grantor within forty-five (45) days of receipt of Grantor's written request and payment therefore.

XI. ACCESS BY PUBLIC

No right of access by the general public to the Protected Property is conveyed by this Easement.

XII. COSTS, LIABILITIES AND INSURANCE, TAXES, ENVIRONMENTAL COMPLIANCE, AND INDEMNIFICATION

A. **Costs, Legal Requirements, Liabilities and Insurance.** Grantor retains all responsibilities and will bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approval for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use will be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor; provided that the Protected Property will be deemed to be free of such liens if Grantor or Grantee, as the case may be, is diligently challenging the application of such liens to the Protected Property.

B. **Taxes.** Grantor will pay all taxes levied against the Protected Property by government authority as they become due, and will furnish Grantee with satisfactory evidence of payment upon request. If Grantor fails to pay any taxes when due, Grantee is authorized, but in

no event obligated, to make or advance such payment of taxes upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment will bear interest until paid by Grantor at the maximum rate allowed by law.

C. Representations and Warranties. Grantor represents and warrants, after reasonable investigation, that:

1. There are no apparent or latent defects in or on the Protected Property;
2. Grantor is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify the Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee shall be responsible for any hazardous Materials contributed after this date to the Protected property by Grantee.

"Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and

similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment; *(This provision also appears in Exhibit E, Section II.3.)*

3. There has been no release, dumping, burying, abandonment or migration from off-site on the Protected Property of any Hazardous Materials;

4. There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Agricultural and other Conservation Values of any portion of the Protected Property. No civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of local, state or federal laws, and neither Grantor nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of local, state or federal laws.

5. Grantor has good title to the Protected Property, that the Grantor has the right to convey this Conservation Easement, and that the Protected Property is free and clear of any encumbrances, except those enumerated in Exhibit A.

D. Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Protected Property of any Hazardous Materials, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee will be responsible for remediation.

E. Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee or any third party beneficiary to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), or the Washington State Model Toxics Control Act, Chapter 70.105D RCW, as amended ("MTCA").

F. Grantor's Indemnification. Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and

damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with:

1. Violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee;

2. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property except to the extent caused by the willfulness or negligence of the Indemnified Parties.

G. General Indemnification Of the United States of America. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Grantor shall indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

(This provision also appears in Exhibit E, Section II.2.)

XIII. EXTINGUISHMENT, CONDEMNATION AND SUBSEQUENT TRANSFER

A. Extinguishment. This Easement may be terminated or extinguished, whether in whole or in part only upon petition by one or all of the parties, by a court having jurisdiction over

this Easement that determines by judicial proceedings that circumstances have rendered the Purpose impossible to achieve. Extinguishment may not proceed without the approval of the United States. In making this grant, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically viable than permitted uses. It is the intent of both Grantor and Grantee that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of the Easement. Specifically, the cessation of agricultural operations shall not be considered grounds for extinguishment of this Conservation Easement. Grantor and Grantee agree that the proceeds to which Grantee will be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishments, will be determined, unless otherwise provided by Washington law at the time, in accordance with Section XIII.B. Those proceeds shall be apportioned as follows: to United States 50%; to Methow Conservancy 50%; this allocation represents the proportion each party contributed to the purchase price of the easement.

B. Valuation. This Easement constitutes a real property interest immediately vested in Grantee, RCO and the United States. The fair market value of the Protected Property will be determined at the time this Conservation Easement is terminated, extinguished, or condemned by a complete summary appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards for Federal Land Acquisition (UASFLA), is approved by the Grantee and the United States of America, and is completed by a Washington State certified general appraiser. The value of the Conservation Easement interest at the time this Conservation Easement is terminated, extinguished, or condemned will be determined by multiplying the fair market value of the Protected Property at the time this Conservation Easement is terminated, extinguished, or condemned, as if it were unencumbered by the Easement (minus any increase in the value of the Protected Property attributable to improvements placed on the Protected Property after the effective date of this Easement) by the ratio of the appraised value of the Easement to the fair market value of the Protected Property, without deduction for the value of the Easement, as of the effective date of this Easement. That ratio is .89/1, and shall remain constant.

Until such time as the Grantee and the United States receive the value of the real property interest in the Protected Property from the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the allocation of the value of the real property interest in the Protected Property due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the allocation due to the United States.

C. Condemnation. This Easement immediately vests real property interest in the Grantee, RCO and the United States and condemnation or extinguishment may not occur without the approval of the United States. If all or any of the Protected Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public,

corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee will act jointly to recover the full value of the interest in the Protected Property subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase will be paid out of the amount recovered. Except as provided by applicable law, Grantor and Grantee agree that RCO's and the United States' share of the balance of the amount recovered will be determined by multiplying that balance by the ratio set forth in subsection XIII.B above. Those proceeds shall be apportioned as follows: to United States 50%; to Methow Conservancy 50%; this allocation represents the proportion each party contributed to the purchase price of the easement.

(Parallel provisions as to extinguishment, termination and condemnation are found in Exhibit E, Section II.4.)

D. Application of Proceeds. Grantee will use any proceeds received under the circumstances described in this Section XIII in a manner consistent with its conservation purpose, which is exemplified by this Easement.

E. Subsequent Transfers. Grantor agrees to:

1. Incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest;
2. Describe this Easement in and append it to any executory contract for the transfer of any interest in the Protected Property;

The failure of Grantor to perform any act required by this subsection will not impair the validity of this Easement or limit its enforceability in any way.

XIV. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may amend this Easement; provided that the Grantor and Grantee obtain the prior written approval of RCO and NRCS and further provided that no amendment will be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including RCW 64.04.130, Chapter 84.34 RCW, or Section 170(h) of the Code, as amended (or any successor provision(s) then applicable). Any such amendment must be consistent with the Purpose of this Easement, may not affect its perpetual duration, and will be recorded in the official records of Okanogan County, Washington, and any other jurisdiction in which such recording is required. *(Additional requirements for amendment of this Conservation Easement are found in Exhibit E, Section II.5.)*

XV. ASSIGNMENT AND SUCCESSION

A. Assignment. This Easement is transferable only with the prior written approval of NRCS, which shall not be unreasonably withheld; however, Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Code, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision(s) then applicable). As a condition of such transfer, Grantee will require that the transferee exercise its rights under the assignment consistent with the Purpose. Grantee will notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The failure of Grantee to give such notice will not affect the validity of such assignment nor impair the validity of this Easement or limit its enforceability in any way.

B. Succession. If at any time it becomes impossible for Grantee to ensure compliance with the covenants, terms, conditions and restrictions contained in this Easement, or Grantee ceases to exist or to be authorized to acquire and hold conservation easements under RCW 64.04.130 and 84.34.250 (or any successor provision(s) then applicable, and to be a qualified origination under Section 170(h) of the Code, as amended (or any successor provision then applicable), then Grantee's rights and obligations under this Easement will become vested and fall upon one of the following named entities to the extent that they accept this Easement, in the following order:

1. Chelan-Douglas Land Trust; or
2. Such other entity, with purposes similar to Grantee's, constituting a "qualified organization" within the meaning of Section 170(h) of the Code, as amended (or any successor provision then applicable), authorized to acquire and hold conservation easements under RCW 64.04.130 and 84.34.250 (or any successor provision(s) then applicable; provided that if such vesting in any of the entities named above is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Easement will vest in such organization as a court having jurisdiction shall direct, pursuant to then applicable Washington law and the Code and with due regard to the Purpose.

XVI. UNITED STATES RIGHTS OF ENFORCEMENT AND INSPECTION

A. Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE are not enforced by the holder of the ALE. The Secretary of the United States Department of Agriculture (the Secretary) or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE, as determined in the sole discretion of the Secretary.

B. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor up to the amount of the United States contribution to the purchase of the ALE.

C. The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the ALE and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE, the ALE Plan, and the United States Cooperative Agreement with the Grantee, the United States will have reasonable access to the Protected Property with advance notice to Grantee and Grantor or Grantor's representative.

D. In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantee and Grantor or Grantor's representative at the earliest practicable time.

This provision also appears in Exhibit E, Section II.1.

XVII. RECORDATION

Grantee will record this instrument in a timely fashion in the official records of Okanogan County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

XVIII. NO MERGER

In the event that Grantee acquires all or a portion of the fee title to the Protected Property, it is the intent of Grantor and Grantee that no merger of title shall take place that would merge the restrictions of this Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Protected Property, as embodied in the Easement, shall, in the event that all or a portion of title become vested in Grantee, become and remain permanent and perpetual restrictions on the use of the Protected Property. Grantee covenants to do what is required to prevent merger of title, including, if necessary, assignment of the Easement to an appropriate third party pursuant to Section XV.A.

XXIX. GENERAL PROVISIONS

A. **Controlling Law.** The interpretation and performance of this Easement is governed by the laws of the State of Washington.

B. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement will be liberally construed in favor of the grant to effect the Purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose that would render the provision valid will be favored over any interpretation that would render it invalid.

C. **Severability.** If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, will not be affected.

D. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Protected Property, all of which are merged into this Easement. No alteration or variation of this instrument will be valid or binding unless contained in an amendment that complies with Section XIV.

E. **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.

F. **"Grantor" - "Grantee".** The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, means and includes, respectively, the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Grantee, its personal representatives, successors and assigns.

G. **Successors and Assigns.** The covenants, terms, conditions, and restrictions of this Easement are binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and will continue as a servitude running in perpetuity with the Protected Property.

H. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer will survive transfer.

I. **Counterparts.** The Parties may execute this instrument in two or more counterparts, which will be signed by all Parties. Each counterpart shall be deemed an original

instrument as against any Party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

J. Authority. The individuals signing below, if signing on behalf of any entity, represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.

K. Joint Obligations. The obligations imposed by this Easement upon Grantor shall be joint and several.

M. Captions. The captions in this instrument have been inserted solely for convenience and ease of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

L. Recitals. The Parties agree that the terms and recitals set forth in Section I (among other terms of this Easement) are material to this Easement, and that each Party has relied on the material nature of such terms and recitals in entering into this Easement. Each term and recital set forth in Section I is fully incorporated into this Easement.

M. Effective Date. The effective date of this Easement is the date of recording in the records of Okanogan County, Washington.

XX. MINIMUM DEED TERMS FOR THE PROTECTION OF AGRICULTURAL USE

This Agricultural Land Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP). The EXHIBIT E is attached hereto and incorporated herein by reference and will run with the land in perpetuity. As required by 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, and as a condition of receiving ACEP funds, all present and future use of the Protected Property identified in EXHIBIT A (legal description or survey) is and will remain subject to the terms and conditions described forthwith in this Addendum entitled Minimum Deed Terms For The Protection Of Agricultural Use in EXHIBIT E that is appended to and made a part of this easement deed.

XXI. SCHEDULE OF EXHIBITS

- A. Legal Description of Protected Property Subject to Easement.
- B. Site Map.
- C. Notice of Transfer.
- D. Dedicated Water Rights
- E. Minimum Deed Terms For The Protection Of Agricultural Use.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns, and the United States of America forever.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 22 day of July, 2020.

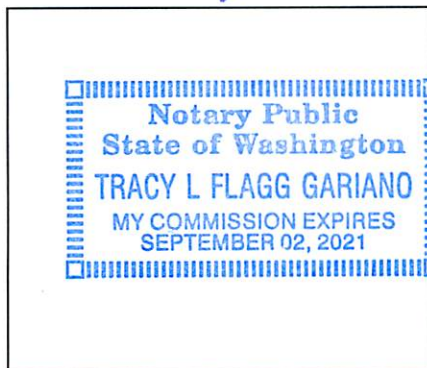
Charles Lehman
Grantor-Charles Lehman

Youngme Lehman
Grantor-Youngme Lehman

STATE OF WASHINGTON)
) ss.
COUNTY OF Okanoogan

On this 22 day of July, 2020 personally appeared before me Charles Lehman and Youngme Lehman, to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

Dated: July 22, 2020



Tracy L. Flagg Gariano
Notary Public
Print Name TRACY L. Flagg GARIANO
My commission expires 9-2-2021

(Use this space for notarial stamp/seal)

The Methow Conservancy does hereby accept the above Grant Deed of Conservation Easement.

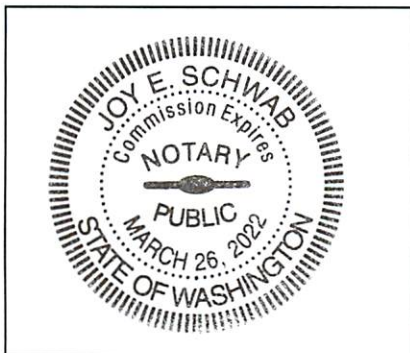
Dated: July 13, 2020

Grantee
By [Signature]
Its Vice President

STATE OF WASHINGTON)
) ss.
COUNTY OF OKANOGAN)

I certify that I know or have satisfactory evidence that Sam Narey is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Vice President of the Methow Conservancy to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: July 13th, 2020



Joy E. Schwab
Notary Public
Print Name Joy E. Schwab
My commission expires 3-26-2022

(Use this space for notarial stamp/seal)

EXHIBIT A to Conservation Easement

Legal Description

THAT PART OF SECTION 28, TOWNSHIP 34 NORTH, RANGE 22 EAST, WILLAMETTE MERIDIAN MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EAST HALF OF THE SOUTHWEST QUARTER; THE NORTH HALF OF THE SOUTHEAST QUARTER; THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER; AND

THAT PART OF SECTION 33, TOWNSHIP 34 NORTH, RANGE 22 EAST, WILLAMETTE MERIDIAN MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EAST HALF, EXCEPT THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER; THE NORTHWEST QUARTER;
THE EAST HALF OF THE SOUTHWEST QUARTER; THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER; AND

THAT PART OF SECTION 34, TOWNSHIP 34 NORTH, RANGE 22 EAST, WILLAMETTE MERIDIAN MORE PARTICULARLY DESCRIBED AS FOLLOWS;

THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER; AND

THAT PART OF SECTION 4, TOWNSHIP 33 NORTH, RANGE 22 EAST, WILLAMETTE MERIDIAN MORE PARTICULARLY DESCRIBED AS FOLLOWS;

GOVERNMENT LOTS 1 AND 2, THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER; THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER; THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER.

SUBJECT TO THE FOLLOWING EXCEPTIONS:

1. MATTERS SET FORTH BY SURVEY:
RECORDED: MARCH 29, 2005;
RECORDING NO.: BOOK "P" OF SURVEYS, PAGES 222 THROUGH 229;
DISCLOSES: FENCE ENCROACHMENTS.

Lehman Uplands

Exhibit B - FINAL

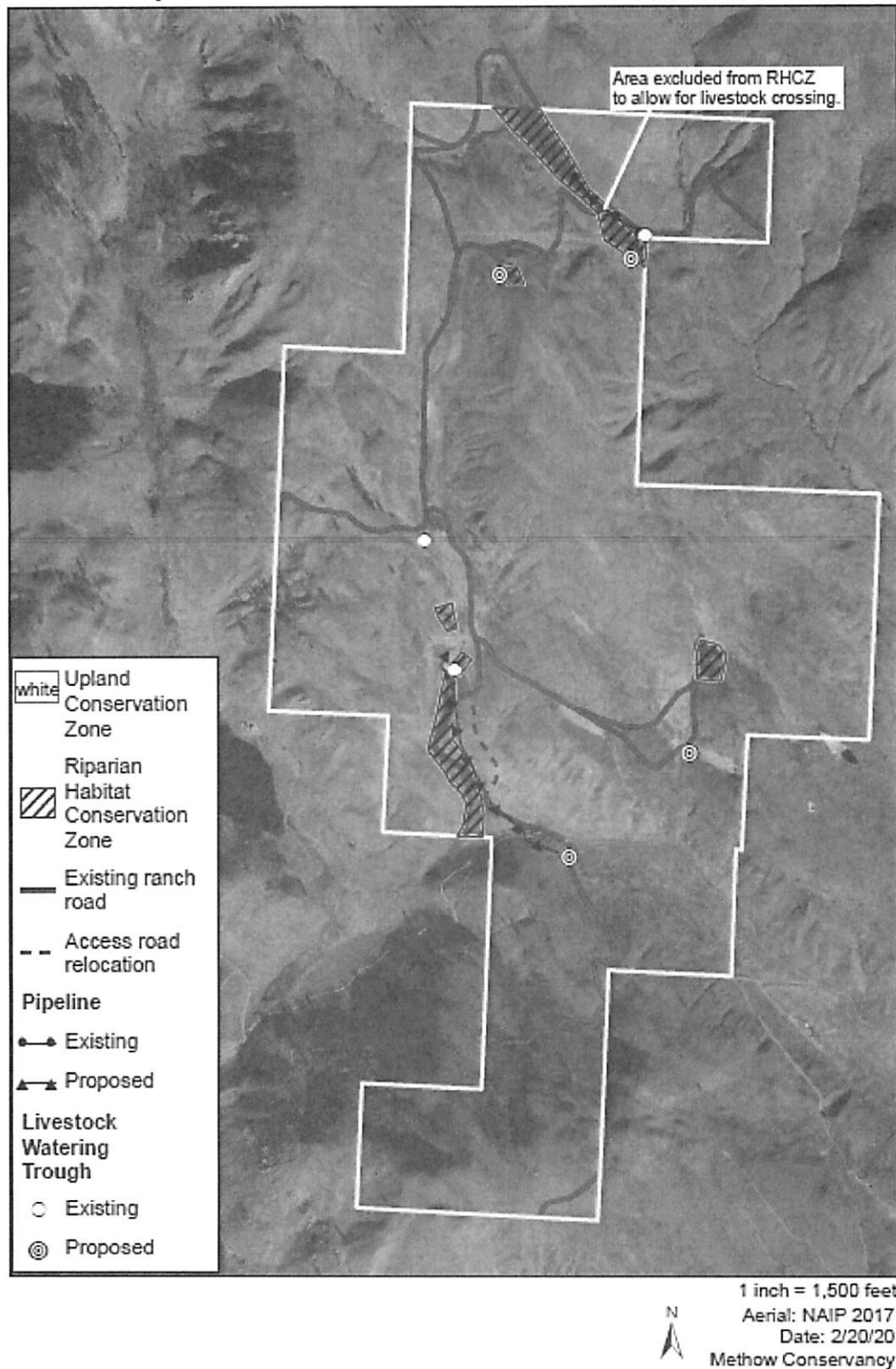


EXHIBIT C to Conservation Easement

Notice of Transfer

Date: _____

To: Methow Conservancy ("Grantee")
From: _____ ("Grantor")

Pursuant to Section 13.E of the Deed of Conservation Easement recorded ____ *(date)* ____ under Auditor's File Number _____, Grantee is hereby notified by Grantor of the transfer of the fee simple interest in the subject Property legally described in **Exhibit A** attached hereto effective **[insert date of closing]** to **[insert name of new Grantor]**, who can be reached at **[insert name, legal address, phone and fax number]**. Also pursuant to Section 13 of the aforementioned Deed of Conservation Easement is attached a copy of the new ownership deed.

GRANTOR:

By: _____

Title: _____

EXHIBIT D to Conservation Easement

Dedicated Water Rights

1. 1.1 acre feet, at 1.5 gpm from a spring, under WRC S-4 129543;
2. 1.1 acre feet, at 1.5 gpm from a spring, under WRC S-4 129544;
3. 1.1 acre feet, at 1.5 gpm from a spring, under WRC S-4 129546;
4. 1.1 acre feet, at 1.5 gpm from a spring, under WRC S-4 129553.

(Note these are all separate rights with different points of diversion)

EXHIBIT E

MINIMUM TERMS FOR AGRICULTURAL LAND EASEMENTS

The Agricultural Conservation Easement Program, 16 U.S.C Section 3865 et seq., facilitated and provided funding for the purchase of an Agricultural Land Easement (ALE) on real property described in Exhibit A, hereafter referred to as "the Protected Property," for the purpose of protecting grazing uses and related conservation values by restoring and conserving the Protected Property.

CHARLES LEHMAN AND YOUNGME LEHMAN (collectively Grantor), the **METHOW CONSERVANCY** (collectively Grantee), and the **UNITED STATES OF AMERICA** (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC) (jointly referred to as the "Parties") acknowledge that the ALE is acquired by the Grantee to protect grazing uses and related conservation values by restoring and conserving the Protected Property. Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of the Grantee.

In order to ensure compliance with the Agricultural Conservation Easement Program, 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, the following rule of interpretation will govern any and all inconsistencies between the ALE and this Exhibit. Notwithstanding any other provision of the ALE, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the following terms and conditions identified in Section I and II. If the terms and conditions in Section I and II are inconsistent with terms and conditions in other sections of the ALE, Section I and II will control; provided, however, that if other sections of the ALE have terms and conditions that are consistent with, but more restrictive to the rights of the Grantor than the terms and conditions in Section I, Paragraphs 1, 2, and 3, those more restrictive terms and conditions will control. If other sections of the ALE are more restrictive to the rights of the Grantor than Section I Paragraph 4 and 5 and Section II then Section I Paragraph 4 and 5 and Section II will control.

SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole.

The terms and conditions of the ALE run with the land and are binding upon the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:

1. **Agricultural Land Easement Plan.** As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Protected Property are subject to an ALE Plan that promotes the long-term viability of the land to meet the ALE purposes. The ALE Plan and any revisions thereto must be approved by the Grantor, the Grantee, and NRCS. Grantor agrees the use of the property will be subject to the ALE Plan on the Protected Property.

The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the conservation purposes of this ALE. The Grantee and Grantor agree to update the ALE Plan in the event the agricultural uses or ownership of the Protected Property change. A copy of the current ALE Plan is kept on file with the Grantee.

The Grantee must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, NRCS may notify the Grantee. NRCS will give the Grantee and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action. If Grantee fails to enforce the terms of the ALE, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement.

2. **Limitation on Impervious Surfaces.** Impervious surfaces will not exceed 2% of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this ALE.

3. **Limitations on Nonagricultural Uses.** Any activities inconsistent with the purposes of the ALE are prohibited. The provisions of this ALE limit the types of agricultural operations that can occur on the Protected Property to those that restore or conserve grassland, and protect grazing uses, and related conservation values. The following activities are inconsistent with the purposes of ALE and are specifically prohibited, subject to the qualifications stated below:

(A) Subdivision – Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited

(B) Industrial or Commercial Uses – Industrial or commercial activities on the Protected Property are prohibited except for the following:

(i) Agricultural production and related uses conducted as described in the ALE Plan

(ii) The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the conservation purposes of this Easement

(iii) Temporary or seasonal outdoor activities or events that do not harm the agricultural use or grazing and grassland use, future viability, and related conservation values of the Protected Property herein protected

(iv) Commercial enterprises related to agriculture or forestry including but not limited to *agritourism*, (v) Small-scale commercial enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts

(C) Construction on the Protected Property – All new structures and improvements must be located within the Building Envelopes, containing approximately 0 acres and described in EXHIBIT (*there is no Building Envelope on the Protected Property*), which is appended to and made a part of the ALE.

Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under Section I, Paragraph (4)(C) that neither individually nor collectively have an adverse impact on the grassland, grazing uses and related conservation values of the Protected Property, may be built outside of the Building Envelope with prior written approval of the Grantee provided that the agricultural structures or utilities are consistent with the ALE Plan described Section I, Paragraph 1.

Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Fences may be maintained and replaced and new fences installed only in accordance with the ALE Plan and consistent with grassland species management requirements identified in the ALE Plan.

(D) Granting of Easements for Utilities and Roads – The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the grassland, grazing uses, and related conservation values of the Protected Property as determined by the Grantee in consultation with the Chief of NRCS.

(E) Surface Alteration – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

(i) Dam construction in accordance with an ALE Plan to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation

(ii) Erosion and sediment control pursuant to a plan approved by the Grantee

(iii) Soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Easement

(iv) Grazing uses or grassland restoration and related conservation activities conducted in accordance with the ALE Plan

(F) Oil, Gas, or Mineral Exploration and Extraction – Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this ALE or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from Protected Property is prohibited.

(G) Crop Cultivation. Except for grazing uses and grassland restoration and conservation, the cultivation or production of crops, nonperennial forages for human or domestic animal consumption, crop seed production, or planting of orchards, vineyards, berries, tree farms, or other perennial nongrassland agricultural product is prohibited.

4. Preserving Agricultural Uses. No uses will be allowed that violate Federal laws, including Federal drug laws or that decrease the ALE's protection for the grazing uses and related conservation values or adversely impact the restoration or conservation of the grassland, and related conservation values of the Protected Property. Allowed uses of the Protected Property include the specific uses allowed in Section I, Paragraph (3)(B) (i)-(v) and the following activities, subject to the qualifications stated below:

(A) Agricultural Production – The production, processing, and marketing of livestock and agricultural products compatible with restoration and conservation of grassland, grazing uses, and related conservation values is allowed provided it is conducted in a manner consistent with the terms of the ALE Plan described in Section I, Paragraph 1.

(B) Forest Management and Timber Harvest – Forest management and timber harvesting is allowed, provided it is carried out, to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. In addition, if the Protected Property contains contiguous forest that exceeds the greater of 40 acres or 20 percent of the easement area then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager, in consultation with the Grantee. A forest management plan will not be required for the following allowed noncommercial activities: cutting of trees for the construction of allowed roads, utilities, buildings, and structures on the Protected Property, cutting of trees for trail clearing, cutting of trees for domestic use as firewood or for other domestic uses by Grantor,

removal of trees posing an imminent hazard to the health or safety of persons or livestock, or removal of invasive species.

(C) On-Farm Energy Production – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the conservation values of the Protected Property and consistent with the purposes of the ALE.

(D) Grassland Uses of the Protected Property – Grantors are allowed to graze, hay, harvest for hay and noncrop seed production, mow, construct fire breaks, conduct fire suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions and conservation purposes of this Easement. The term "common grazing practices" means those practices customary to the region where the Protected Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Protected Property. Grantors must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified in the ALE Plan. Determinations of nesting seasons for birds whose populations are in significant decline and the areas of the property affected by this restriction will be set forth within the ALE Plan for the Protected Property that has been approved by Grantor, Grantee, and NRCS.

SECTION II - PROTECTION OF THE UNITED STATES' INTERESTS

1. **United States Right of Enforcement.** Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE are not enforced by the holder of the ALE. The Secretary of the United States Department of Agriculture (the Secretary) or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the easement against the Grantor up to the amount of the United States contribution to the purchase of the ALE.

The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the ALE and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United

States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE, the ALE Plan, and the United States Cooperative Agreement with the Grantee, the United States will have reasonable access to the Protected Property with advance notice to Grantee and Grantor or Grantor's representative.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantee and Grantor or Grantor's representative at the earliest practicable time.

2. General Disclaimer and Grantor Warranty. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Grantor must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Agricultural Land Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

3. Environmental Warranty. Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless and indemnify Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees,

arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee on the Protected Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

"Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

4. Extinguishment, Termination, and Condemnation. The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Grantee and the United States. Due to the Federal interest in this ALE, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Protected Property.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and the United States stipulate that the fair market value of the ALE is 89 percent, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time.

If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this ALE. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the United States.

The allocation of the Proportionate Share between the Grantee and the United States will be as follows: (a) to the Grantee or its designee, as set forth in Section XIII, Sections A, B and C, 50 percent of the Proportionate Share; and (b) to the United States 50 percent of the Proportionate Share. Until such time as the Grantee and the United States receive the Proportionate Share from

the Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

5. Amendment. This ALE may be amended only if, in the sole and exclusive judgment of the Grantee and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this ALE and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE, such amendments must be mutually agreed upon by the Grantee, Grantor, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.